

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DANIEL KLEEBERG, LISA STEIN, and
AUDREY HAYS,

Plaintiffs,

v.

LESTER EBER; ALEXBAY, LLC f/k/a
LESTER EBER, LLC; CANANDAIGUA
NATIONAL CORPORATION d/b/a
CANANDAIGUA NATIONAL BANK &
TRUST; ESTATE OF ELLIOTT W.
GUMAER, JR.; EBER BROS. & CO.,
INC.; EBER BROS. WINE AND LIQUOR
CORPORATION; EBER BROS. WINE &
LIQUOR METRO, INC.; EBER-
CONNECTICUT, LLC; and WENDY
EBER,

Defendants.

Civil Action No. 16-CV-9517(LAK)

**DECLARATION OF BRIAN C. BROOK IN SUPPORT OF PLAINTIFFS' MOTION TO
DISQUALIFY UNDERBERG & KESSLER FROM REPRESENTING EBER BROS. &
CO., INC AND EBER BROS. WINE AND LIQUOR CORP.**

1. I, Brian C. Brook, am an attorney licensed to practice law in the State of New York and in this Court, among other jurisdictions, am a partner in the law firm of Clinton Brook & Peed, and have been counsel of record for the Plaintiffs in the above-captioned case since its initial filing in December 2016.

2. I submit this declaration and the exhibits attached hereto in support of Plaintiff's Motion to Disqualify Underberg & Kessler, LLP from representing Eber Bros. & Co., Inc. and Eber Bros. Wine and Liquor Corporation.

3. Attached as Exhibit A is a copy of an organizational chart produced by the Eber Parties at EB-00020402.

4. Attached as Exhibit B is a copy of a letter referencing an Agreement and Plan of Merger between Eber Bros. Wine & Liquor Metro, Inc. and Slocum & Sons, Inc., and certain their affiliates (the “Merger Agreement”). It was produced by the Eber Parties at EB-00022108–09. In response to our request to produce the referenced Merger Agreement, Underberg & Kessler claimed that the document no longer exists.

5. Attached as Exhibit C is a copy of Lester Eber’s Responses to Daniel Kleeberg’s Second Set of Interrogatories.

6. Attached as Exhibit D is a copy of an Agreement reflecting transactions between Eber Metro and Polebridge Bowman.

7. Attached as Exhibit E is a copy of Lester Eber’s December 8, 2011 Affidavit.

8. Attached as Exhibit F is a copy of a letter sent by Paul Keneally to Daryoush Behbood on August 17, 2018.

9. Attached as Exhibit G is a copy of the February 21, 2012 Summons and Complaint for Alexbay, LLC vs. Eber Bros. Wine & Liquor Corp., at al., Index No. 2012-1919.

10. Attached as Exhibit H is a copy of the two engagement agreements with Underberg & Kessler that were filed on the docket in this matter.

11. Attached as Exhibit I is a true and correct copy of the June 1, 2017 Order for Judicial Settlement of Final Account and Termination of the Trust entered by the Monroe County Surrogate’s Court.

12. Attached as Exhibit J is a copy of printouts from the New York Department of State website showing the current registration status for Eber Bros. & Co. Inc. and Eber Bros. Wine and Liquor Corp.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: November 16, 2018

/s Brian C. Brook
Brian C. Brook